
Date: March 28, 2022

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item D: Rulemaking authority delegation (Action)
April 6-7, 2022, EQC meeting

Purpose of item DEQ will propose delegation of authority for the 2022 Water Quality fee rulemaking from the commission to the DEQ director.

DEQ recommendation and proposed EQC motion DEQ recommends that the Oregon Environmental Quality Commission delegate the 2022 Water Quality Fee Increase rulemaking to the DEQ Director for a decision.

Proposed EQC motion:
I move that the Oregon Environmental Quality Commission delegate the 2022 Water Quality Fee Increase Rule to the DEQ Director for a decision.

Reason for action Delegating rulemaking authority to the DEQ Director for simple, routine actions allows the commission to focus its workload on major policy issues. The rulemaking development process, including requirements for public engagement and comment opportunities, will remain the same, and the commission may rescind or modify its delegation through formal action at any time.

Background Under Oregon law, the Environmental Quality Commission holds the authorities for rulemaking and policy decision-making for DEQ. However, ORS 183.325 allows the commission to delegate some authorities, including rulemaking authority, to named employees of DEQ, as long as specific protocols are followed to formalize this written delegation.

The commission has delegated some rulemaking elements before, including the full authority for rule decisions for the 2022 Title V CPI Phase II Fee Increase Rules and the 2022 Hazardous Waste Rules that was adopted at the February 2022 commission meeting. Previously, in 2017, EQC approved the delegation of statutory minor corrections to the DEQ Director, which was then sub-delegated to the DEQ Rules Coordinator. That delegation allows the DEQ Rules Coordinator to make typographical and grammatical corrections to rules, once they have been approved by the commission, and file those corrections with the Secretary of State. In 2018, the commission

delegated advisory committee member appointment to the DEQ Director. That delegation allows Director Whitman to formally appoint rules advisory committee members, through the process established under the Oregon Administrative Procedures Act.

**2022 Water
Quality Fee
Increase
rulemaking**

The purpose of this rulemaking is to update water quality permit fees for Chapter 340 of the Oregon Administrative Rules Divisions 045 and 071. These fees apply to National Pollutant Discharge Elimination System permits and Water Pollution Control Facility permits. Oregon state law allows an annual fee increase for the permit types in these divisions of up to three percent, or the actual increase in program costs, whichever is less. DEQ has projected that program costs will rise by approximately 4.9 percent for fiscal year 2023, so the statutory maximum of three percent would apply. The proposed rule amendments are to increase water quality fees by three percent in 2022 for the state fiscal year 2023 (starting July 1, 2022), as provided in ORS 468B.051.

**EQC
involvement**

Going forward, DEQ will bring proposals for specific rulemaking authority delegations to the commission on an annual basis, in conjunction with the annual rulemaking plan informational item. Director Whitman will provide formal notification to the commission when making rulemaking decisions under the delegated authorities.